

DOCKET NO.: ORT-1482 US
Application No.: 09/922,874
Office Action Dated: November 19, 2003

PATENT

REMARKS/ARGUMENTS

Claims 1-10, 12, 14, 16, 18-24 and 26-30 are pending and under consideration.

Claims 1-10 have been deemed allowable.

Claims 12, 14, 16, 18-24, 26-30 were rejected under 35 U.S.C. §112, first paragraph, for alleged lack of enablement.

In accordance with the present amendment, claims 12, 14, 16, and 24 have been amended to clarify the subject matter Applicants regard as their invention. The amendments to claims 12, 14, 16 and 24 are made solely for purposes of clarification and do not narrow the claims in any way. Applicants respectfully submit that the presently amended claims satisfy all requirements of 35 U.S.C. §112, first paragraph, and in particular enable the skilled artisan to practice the full scope of the claimed invention. Applicants have amended claims 12, 16 and 24 to better reflect that the populations of cells comprise at least one cell that has been identified as being protected from ischemic death in the presence of the pharmaceutical compositions of the invention.

Support for this found with within the specification, particularly within the "Detailed Description" wherein the term "cell population" is defined on page 31, first full paragraph. This distinction provides that the cell populations contain such cells, thus *no undue* experimentation on the part of the skilled artisan is required. Also because the cell populations may be heterogeneous, the presence of neuronal or other cells does not alter the ability of the skilled artisan, for example, to practice the method of reducing cell death. Nothing more is required under the statute, or under the standards of *In re Wands*. Accordingly, Applicants respectfully request withdrawal of the rejections under 35 U.S.C. §112, first paragraph.

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Applicants believe the present paper to be fully responsive to all outstanding issues. The current amendments are considered to place all the claims in condition for allowance and the same is earnestly sought in an early and favorable action. If the examiner believes that advancement of this application would be facilitated by further discussion with the Applicants, he is invited to contact the undersigned at the telephone number provided below.

Respectfully submitted,



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